

RESOLUTION 06-03

A RESOLUTION OF THE GOVERNING BOARD OF THE MOJAVE DESERT AIR QUALITY MANAGEMENT DISTRICT MAKING FINDINGS, CERTIFYING THE NOTICE OF EXEMPTION, AMENDING REGULATION XIII – *NEW SOURCE REVIEW* (SPECIFICALLY RULES 1302 – *PROCEDURE*, 1305 *EMISSIONS OFFSETS* AND 1320 – *NEW SOURCE REVIEW FOR TOXIC AIR CONTAMINANTS*) AND ADOPTION OF NEW RULE 1310 – *FEDERAL MAJOR FACILITIES AND FEDERAL MAJOR MODIFICATIONS* AND DIRECTING STAFF ACTIONS.

On August 28, 2006, on motion by Member **ROTHSCHILD**, seconded by Member **RIORDAN**, and carried, the following resolution is adopted:

WHEREAS, the Mojave Desert Air Quality Management District (MDAQMD) has authority pursuant to California Health and Safety Code (H & S Code) §§40702, 40725-40728 to adopt, amend or repeal rules and regulations; and

WHEREAS, the MDAQMD and its predecessor agencies initially adopted Regulation XIII on July 21, 1980; and

WHEREAS, the MDAQMD thereafter amended the Regulation on October 27, 1993, March 25, 1996 and September 24, 2001; and

WHEREAS, the U.S. Environmental Protection Agency (USEPA) promulgated final changes to the requirements to New Source Review in Federal nonattainment areas on December 21, 2002 (67 FR 80187, 40 CFR 51.165); and

WHEREAS, these regulations were challenged in Federal Court resulting in a decision whereby some of the requirements were stayed indefinitely while others remained in effect (State of New York vs. USEPA, D.C. Cir 2005, 413 F3d. 3); and

WHEREAS, the regulations which remained in effect required areas which had been designated nonattainment for any regulated air pollutant to submit minimum program elements to USEPA; and

WHEREAS, in 2003 the California Legislature enacted the Protect California Air Act of 2003 (SB288 of 2003; H&S Code §§42500 et seq.); and

WHEREAS, the California legislation required the retention of the new source review requirements in place as of December 30, 2002; and

WHEREAS, the MDAQMD has developed the proposed amendments to Regulation XIII and new Rule 1310 to bifurcate the New Source Review requirements into State and Federal portions; and

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RESOLUTION 06-03

1 **WHEREAS**, the State portions will retain the requirements in place as of December 30, 2002 in
2 compliance with H&S Code §§42500 et seq.; and

3 **WHEREAS**, the Federal portions will implement the new federal requirements for those facilities
4 large enough to be considered Federal Facilities or which have Federal Major Modifications in
5 compliance with the effective provisions of 40 CFR 51.165; and

6 **WHEREAS**, the proposed amendments to Regulation XIII and adoption of Rule 1310 are
7 necessary to comply with the new provisions of 40 CFR 51.165 and H&S Code §§42500; and

8 **WHEREAS**, the MDAQMD has the authority pursuant to H & S Code §40702 to amend rules
9 and regulations; and

10 **WHEREAS**, the proposed amendments are clear in that the meaning can be easily understood by
11 the persons impacted by the Rule; and

12 **WHEREAS**, the proposed amendments are in harmony with, and not in conflict with, or
13 contradictory to existing statutes, court decisions, or State or federal regulations because bifurcation of the
14 New Source Review process into State and Federal elements allows compliance with both 40 CFR 51.165
15 and H&S Code §§42500 et seq.; and

16 **WHEREAS**, the proposed amendments do not impose the same requirements as any existing
17 State or federal regulation because 40 CFR 51.165 requires implement rules to be submitted to USEPA
18 for approval; and

19 **WHEREAS**, the proposed amendments are properly referenced; and

20 **WHEREAS**, a public hearing has been properly noticed and conducted, pursuant to H & S Code
21 §40725, concerning the proposed amendments to Regulation XIII and adoption of new Rule 1310; and

22 **WHEREAS**, a Notice of Exemption, a Categorical Exemption (Class 8, 14 CCR §15308) for the
23 proposed amendments to Regulation XIII and adoption of new Rule 1310, completed in compliance with
24 the California Environmental Quality Act (CEQA), has been presented to the MDAQMD Board; each
25 member having reviewed, considered and approved the information contained therein prior to acting on
26 the proposed amendments to Regulation XIII and adoption of new Rule 1310, and the MDAQMD Board
27 having determined that the proposed amendments will not have any potential for resulting in any adverse
28 impact upon the environment; and

RESOLUTION 06-03

1 **WHEREAS**, the Board has considered the evidence presented at the public hearing; and

2 **NOW, THEREFORE, BE IT RESOLVED**, that the Governing Board of the MDAQMD finds
3 that the proposed amendments to Regulation XIII – *New Source Review* (Specifically Rules 1302 –
4 *Procedure*, 1305 – *Emissions Offsets*, and 1320 – *New Source Review for Toxic Air Contaminants*) and
5 adoption of new Rule 1310 – *Federal Major Facilities and Federal Major Modifications* are necessary,
6 authorized, clear, consistent, non-duplicative and properly referenced; and

7 **BE IT FURTHER RESOLVED**, that the Governing Board of the MDAQMD hereby makes a
8 finding that the Class 8 Categorical Exemption (14 CCR §15308) applies and certifies the Notice of
9 Exemption for the proposed amendments to Regulation XIII and adoption of new Rule 1310; and

10 **BE IT FURTHER RESOLVED**, that the Board of the MDAQMD does hereby adopt, pursuant
11 to the authority granted by law, the proposed amendments to Regulation XIII and adoption of new Rule
12 1310, as set forth in the attachments to this resolution and incorporated herein by this reference; and

13 **BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately upon adoption,
14 that the Clerk of the Board is directed to file the Notice of Exemption in compliance with the provisions
15 of CEQA.

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PASSED, APPROVED AND ADOPTED by the Governing Board of the Mojave Desert Air Quality Management District by the following vote:

AYES: 10 MEMBER: LEONE, SAGONA, RIORDAN GLASPER, VALENTINE
ROTHSCHILD, WILSON, CURRAN, PACK, BENTON

NOES: MEMBER:

ABSENT: 4 MEMBER: CRAIN, BIANE, POSTMUS, HANSBERGER

ABSTAIN: MEMBER:

STATE OF CALIFORNIA)
COUNTY OF SAN BERNARDINO } SS:

I, Michele Baird, Clerk of the Governing Board of the Mojave Desert Air Quality Management District, hereby certify the foregoing to be a full, true and correct copy of the record of the action as the same appears in the Official Minutes of said Governing Board at its meeting of August 28, 2006

Clerk of the Governing Board,
Mojave Desert Air Quality Management District.